



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

U.I.L. 4942.03-05 No Third Party Contacts

Number: 200937038  
Release Date: 9/11/2009

Date: June 18, 2009

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

R =  
B =

Dear :

This is in reply to your ruling request dated June 4, 2007 that you do not directly or indirectly control R within the meaning of section 4942(g)(1)(A) of the Internal Revenue Code ("Code").

You are exempt under section 501(c)(3) of the Code and are classified as a private foundation under section 509(a). R is a trust that is exempt under section 501(c)(3) and is classified as a private operating foundation within the meaning of section 4942(j)(3). Over the past 14 years R has promoted democratic governance, human rights, and economic, legal and social reform.

B, the "Initial Member", is currently your sole member. The Initial Member may appoint additional and/or successor members. The members serve as your Class A Directors and elect your Class B Directors. It is expected that the Initial Member will bequeath a substantial portion of his estate to you. It is expected that, after the death of the Initial Member, you will make distributions to R to further R's charitable purposes.

R has a board of trustees that acts by majority vote. The trustees of R from time to time may appoint additional and/or successor trustees by majority vote. Your current directors also serve as trustees of R. The trustees of R have established an Executive Committee which has full authority to act on behalf of the trustees in between meetings of the trustees. The Executive Committee will cease to exist upon the death of the Initial Member.

The Executive Committee of R passed resolutions effective upon the death of the Initial Member. Pursuant to these resolutions, and at all times thereafter, the majority of trustees and officers of R will be persons who are not your directors or otherwise disqualified persons with respect to you. Also, no disqualified person with respect to you will have any special voting rights with respect to R. In addition, if at any time after the death of the Initial Member the trustees of R re-establish an Executive Committee, then at all times the majority of trustees who

constitute the Executive Committee will be persons who are not your directors or otherwise disqualified persons with respect to you. These resolutions may be amended only by approval of two-thirds of the trustees of R.

It is expected that grants from you will constitute a large majority of R's funding after the Initial Member's death. You represent that you will not impose any material restrictions or conditions on the grants to R that would prevent R from freely and effectively employing the transferred assets, or the income therefrom, in furtherance of its exempt purposes.

The following representations have been made:

1. At all times after the death of the Initial Member, the majority of trustees of R will be persons who are not your directors or otherwise disqualified persons with respect to you;
2. At all times after the death of the Initial Member, no disqualified person with respect to you will have any special voting rights with respect to R;
3. If the trustees of R re-establish an Executive Committee of R, then at all times the majority of trustees who constitute the Executive Committee will be persons who are not your directors or otherwise disqualified persons with respect to you;
4. At all times after the death of the Initial Member, a majority of R's officers will be persons who are not disqualified persons with respect to you; and
5. You will not impose any material restrictions or conditions on the grants to R that would prevent R from freely and effectively employing the transferred assets or the income therefrom, in furtherance of its exempt purposes.

Ruling Requested:

That at all times after the death of the Initial Member you will not directly or indirectly control R within the meaning of section 4942(g)(1)(A) of the Code

Law:

Section 4942(g)(1)(A) of the Code defines the term "qualifying distribution" to mean any amount (including reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons (as defined in section 4946) which respect to the foundation, except as provided in paragraph (3), or (ii) a private foundation which is not an operating foundation (as defined in subsection (j)(3)), except as provided in paragraph (3).

Section 53.4942(a)-3(a)(3) of the Foundation and Similar Excise Taxes Regulations ("regulations") provides that an organization is "controlled" by a foundation or one or more disqualified persons if any of such persons may, by aggregating their votes or positions of authority, require the donee organization to make an expenditure, or prevent the donee

organization from making an expenditure, regardless of the method by which the control is exercised or exercisable. "Control" of a donee organization is determined without regard to any conditions imposed upon the donee as part of the distribution or any other restrictions accompanying the distribution as to the manner in which the distribution is to be used, unless the conditions or restrictions are described in section 1.507-2(a)(8) of the Income Tax Regulations. In general, it is the donee, not the distribution, which must be "controlled" by the transferor private foundation. Thus, the furnishing of support to an organization and the consequent imposition of budgetary procedures upon that organization with respect to such support shall not in itself be treated as subjecting that organization to the transferor foundation's control. Such "budgetary procedures" include expenditure responsibility requirements under section 4945(d)(4). The "controlled" organization need not be a private foundation; it may be any type of exempt or nonexempt organization including an operating foundation.

Section 4946(a) of the Code defines a "disqualified person" with respect to a private foundation as including:

- A. a substantial contributor,
- B. a foundation manager,
- C. an owner of more than 20% of (1) the voting power of a corporation, (2) the profits interest of a partnership, or (3) the beneficial interest of a trust, if those entities are substantial contributors,
- D. a family member of any of the individuals described in A - C above,
- E. any corporation if persons described in A - D above own more than 35% of its voting power,
- F. any partnership if persons described in A - D above own more than 35% of its profits interests, and
- G. any trust or estate if persons described in A - D above own more than 35% of its beneficial interests.

Section 4946(a)(2) of the Code defines the term "substantial contributor" as a person described in section 507(d)(2). Section 507(d)(2) defines "substantial contributor" as the creator of a trust and any person who contributed more than \$5,000 to a private foundation, if that amount is more than 2% of the total contributions and bequests received in that taxable year.

#### Analysis:

Amounts spent by a private foundation must be in the form of a qualifying distribution in order to meet the mandatory payout requirements. However, not all contributions or disbursements made by a foundation constitute qualifying distributions. Qualifying distributions, as set forth in section 4942(g)(1)(A) of the Code, defines what constitutes a qualifying distribution and also specifically excludes from that definition of a qualifying distribution any contribution to an

organization controlled, directly or indirectly, by the foundation or one or more disqualified persons. Since your directors are currently also the trustees of R, R is considered to be controlled by you. See section 4946. However, based on resolutions passed by R, and representations made by you, at all times after the death of the Initial Member, the majority of trustees and officers of R will not be persons who are officers, directors of you or otherwise disqualified persons, as defined in section 4946, with respect to you, and neither you nor your disqualified persons will have any special voting rights with respect to R. Also, if R's trustees re-establish its Executive Committee, then at all times the majority its members will be persons who are not your directors or otherwise disqualified persons with respect to R.

You have also represented that at all times after the death of the Initial Member, a majority of your officers will not impose any material restrictions or conditions on grants received that would prevent R from freely and effectively employing the transferred assets, or the income therefrom, in furtherance of its exempt purposes. Therefore, neither you nor your disqualified persons can, by aggregating their votes or positions of authority, require R to make an expenditure or prevent R from making an expenditure. Therefore, after the death of the Initial Member and implementation of the above representations and resolutions, you will not directly or indirectly control R.

**Ruling:**

Based on the foregoing, that after the death of the Initial Member, you will not directly or indirectly control R within the meaning of section 4942(g)(1)(A) of the Code.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Ronald J. Shoemaker  
Manager, Exempt Organizations  
Technical Group 2

Enclosure  
Notice 437